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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,609	10/29/2003	Wanda J. May	09999-0603--May	6858

7590 07/12/2005

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EXAMINER

CONLEY, FREDRICK C

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/696,609

Applicant(s)

MAY, WANDA J.

Examiner

FREDRICK C. CONLEY

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-19 and 26-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-19, 30 and 31 is/are allowed.
- 6) ☒ Claim(s) 26-29 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

The indicated allowability of claims 26-29 and 32 is withdrawn in view of the newly discovered reference(s) to U.S. Pat. No. 4,483,501 to Eddy and U.S. Pat. No. 4,727,890 to Vincent. Rejections based on the newly cited reference(s) follow. The Examiner regrets any inconvenience.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-29 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,186,501 to Eddy.

Claim 27, Eddy discloses a caddy for use with furniture comprising a cushioning object supported by a cushion support structure, said caddy comprising:

a first member 12;

a second member 14 connected to said first member, wherein one of said first and second members is insertable between the cushioning object and the cushion support structure of the furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and cushion support structure, wherein the other of said first and second members defines a free portion of the caddy when said captured portion is inserted between the furniture cushioning object and cushion support structure, and wherein said free portion includes an extensible segment for adjusting the length of said free portion (col. 2-3 lines 68 & 1-2)(fig. 4), whereby said

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free portion is disposed substantially vertically when said captured portion is inserted between the furniture cushioning object and cushion support structure;

a receptacle 30 having an open end for releasably receiving at least one item therein; and

means 28 for connecting said receptacle to said free portion whereby a user of the caddy is inherently capable of orienting said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion. With regards to the receptacle being used to hold sundries, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim 28, Eddy discloses a caddy for use with furniture comprising a cushioning object supported by a cushion support structure, said caddy comprising:

a first member 12;

a second member 14 hingedly connected to said first member (col. 2 lines 24-30), wherein one of said first and second members is insertable between the cushioning object and the cushion support structure of the furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and

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cushion support structure, and wherein the other of said first and second members defines a free portion of the caddy when said captured portion is inserted between the furniture cushioning object and cushion support structure, whereby said free portion is disposed substantially vertically when said captured portion is inserted between the furniture cushioning object and cushion support structure;

a receptacle 30 having an open end for releasably receiving at least one sundries item therein; and

means 28 for connecting said receptacle to said free portion whereby a user of the caddy is inherently capable of orienting said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion. With regards to the receptacle being used to hold sundries, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim 29, Eddy discloses a caddy for use with furniture comprising a cushioning object supported by a cushion support structure, said caddy comprising:
a first member 12;

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a second member 14 connected to said first member, wherein one of said first and second members is insertable between the cushioning object and the cushion support structure of the furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and

cushion support structure, and wherein the other of said first and second members defines a free portion of the caddy when said captured portion is inserted between the furniture cushioning object and cushion support structure, whereby said free portion is disposed substantially vertically when said captured portion is inserted between the furniture cushioning object and cushion support structure;

a receptacle 30 having an open end for releasably receiving at least one sundries item therein; and

means for permanently connecting 24 said receptacle to said free portion whereby a user of the caddy is inherently capable of orienting said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion. With regards to the receptacle being used to hold sundries, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim 32, Eddy discloses a caddy for use with furniture comprising a cushioning object supported by a cushion support structure, said caddy comprising:

a first member 12;

a second member 14 connected to said first member, wherein one of said first and second members is insertable between the cushioning object and the cushion support structure of the furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and

cushion support structure, and wherein the other of said first and second members defines a free portion of the caddy when said captured portion is inserted between the furniture cushioning object and cushion support structure, whereby said free portion is disposed substantially vertically when said captured portion is inserted between the furniture cushioning object and cushion support structure;

a receptacle 30 having an open end for releasably receiving at least one sundries item therein; and

means 28 for releasably connecting said receptacle to said free portion whereby a user of the caddy is inherently capable of orienting said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion, wherein said means for releasably connecting said receptacle to said free portion comprise a pocket attached to said receptacle, said pocket having an open end facing in a direction substantially opposite said open end of said receptacle, said pocket being operable to receive one end of the free portion when the caddy is disposed in a first operative orientation and the opposite end of the free

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portion when the caddy is disposed in an inverted second operative orientation. A pocket is interpreted as receptacle, cavity or opening, therefore, the loop 28 taught by Eddy clearly meets the limitation of a pocket as recited in the claim. With regards to the receptacle being used to hold sundries, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Pat. No. 4,483,501 to Eddy in view of U.S. Pat. No. 4,727,890 to Vincent.

Claim 26, Eddy discloses a caddy for use with furniture comprising a cushioning object supported by a cushion support structure, said caddy comprising:

a first member 12;

a second member 14 connected to said first member, wherein one of said first and second members is insertable between the cushioning object and the cushion support structure of the furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and

cushion support structure, and wherein the other of said first and second members defines a free portion of the caddy when said captured portion is inserted between the furniture cushioning object and cushion support structure, whereby said free portion is disposed substantially vertically when said captured portion is inserted between the furniture cushioning object and cushion support structure;

a receptacle 30 having an open end for releasably receiving at least one sundries item therein; and

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means 28 for connecting said receptacle to said free portion whereby a user of the caddy is inherently capable of orienting said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion. With regards to the receptacle being used to hold sundries, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Eddy fails to disclose the second member releasably connected to the first member. Vincent discloses a caddy having first and second members releasably connected together (col. 1 lines 55-58). It would have been obvious for one having ordinary skill in the art at the time of the invention to have the first and second members releasably connected together as taught by Vincent in order to detach the first member from the second member of Eddy.

Allowable Subject Matter

Claims 17-19 and 30-31 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC


ALISON PICKARD
PRIMARY EXAMINER